BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
) No. 83R-952
HEE YANG JUHANG)

For Appellant: Matthew C. Long
Attorney at Law

For Respondent: Philip Farley
Counsel

O P I N I O N

This appeal is made pursuant to section 19057, subdivision (a),1/ of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claims of Hee Yang Juhang for refund of personal income tax in the amounts of $13,196 and $17,281 for the years 1979 and 1980, respectively.

1/ Unless otherwise specified, all section references are to sections of the Revenue and Taxation Code as in effect for the years in issue.

The issues presented by this appeal are whether appellant received unreported income from prostitution during the years in question and whether respondent properly reconstructed appellant's income to support the resulting jeopardy assessments.

On or about May 19, 1979, officers of the vice squad of the Los Angeles Police Department received a complaint that appellant, an employee of a massage parlor, was engaged in prostitution. A week later, officers- of the vice squad conducted an undercover investigation which resulted in appellant propositioning one of the officers for an act of prostitution. Appellant, a Korean immigrant, was subsequently arrested. The charge of prostitution was later dismissed due to lack of corroboration of the solicited police officer's testimony.

Some time after the arrest, an action was brought by the police commission to revoke appellant's massage technician permit, which she had held since March 6, 1979. On July 7, 1981, during the permit revocation hearing, appellant confided in a Korean interpreter employed by the police department. She told the.. interpreter that she was an illegal alien who had been engaging in prostitution since 1978, the year prior to the date she received her massage permit. Appellant went on to reveal her massage parlor employers since 1978, the fact that she worked six days a week and that she had made between $400 and $1,200 daily. During this same hearing, appellant mentioned that she had recently pur-. chased two homes with substantial cash down payments and had paid $54,898 in cash for a new Mercedes-Benz automobile. The next day, appellant called the interpreterand pleaded with him not to reveal what she had admitted the day before. The interpreter advised his superiors of both conversations.

On July 10, 1981, respondent was informed of the above information. An examination of respondent's' records revealed that appellant had reported income of only $3,151 in 1979 and had not filed a tax return for 1980. Respondent determined that appellant's massage'and prostitution activities resulted in unreported taxable income for the period March 6, 1979, the date she received her massage permit, through July 10, 1981, the date respondent received the above information. Respondent projected appellant's income for that period by using her admitted six-day work week at $400 a day. Respondent, fearing that the collection of taxes on the unreported income would be jeopardized by delay, promptly issued the

appropriate assessments and filed liens against appellant's property.

Thereafter, appellant filed a petition for reassessment. Prior to a decision on the petition, appellant was once again arrested in a raid of a massage parlor and charged with "Living in a House of Ill Fame." This charge was later dismissed. Subsequently, respondent reaffirmed its assessments. Following several threats to have the assessments levied against her property, appellant satisfied the jeopardy assessments by paying cash. Appellant immediately filed claims for refund, which were denied, and this appeal followed.

Appellant argues that a jeopardy assessment cannot be supported by these facts because all of the criminal charges against her were dismissed. Therefore, there is no proof that any illegal activity occurred or that unreported income had been received by appellant.

Respondent may adequately carry its burden of proof that a taxpayer received unreported income through a prima facie showing of illegal activity by the taxpayer. (Hall v. Franchise Tax Board, 244 Cal.App.2d 843 [53 Cal.Rptr. 597] (1966); Appeal of Richard E. and Belle Hummel, Cal. St. Bd. of Equal., Mar. 8, 1976.) The fact that the criminal charges against appellant were dismissed does not indicate that the illegal activity did not occur, but only that the occurrence of the illegal activity could not be proven in a criminal court by admissible evidence beyond a reasonable doubt. As an administrative body, we are allowed to consider the whole record surrounding a case, not just evidence that would be admissible in a trial. (Appeal of Alfred M. Salas and Betty Lee Reyes, Cal. St. Bd. of Equal., Feb. 28, 1984; Appeal of Marcel C. Robles, Cal. St. Bd. of Equal., June 28, 1979.) This consideration may even include evidence that is illegally obtained by the police. (Appeal of Carmine T. Prenesti, Cal. St. Bd. of Equal., Apr. 9, 1985; Appeal of Edwin V. Barmach, Cal. St. Bd. of Equal., July 29, 1981,) Accordingly, a criminal conviction is not required to support the conclusion that a prima facie case has been established that a taxpayer received unreported income from an illegal activity. (Appeal of Carl E. Adams, Cal, St. Bd. of Equal., Mar. 1, 1983.)

Upon review of the record on appeal, we are satisfied that respondent has established at least a prima facie case that appellant received unreported income from illegal prostitution activities during the

period on appeal. Appellant propositioned a police officer the night of her arrest in 1979. Over a year later, during her-massage license revocation hearing, she admitted to the police department interpreter that she had been engaged in prostitution activities since 1978 and that she still was involved in that business. Appellant also admitted that she made between $400 and $1,200 a day from her profession and had used these earnings to purchase two houses and an expensive car. Further, following respondent's initial assessments, appellant was again arrested in a raid of a massage parlor. While none of these incidents alone may have provided enough admissible evidence to lead to a criminal conviction, it is clear that the sum total of her actions and admissions provides ample evidence that appellant was engaged in prostitution and received income from that activity.

Further, we emphasize that neither criminal charge constituted the basis of respondent's jeopardy assessments. The charges dealt with two separate occurrences: the alleged proposition of the officer in 1979 and the fact that appellant was later discovered in a house of prostitution dur'ing a vice squad raid. The jeopardy assessments were based upon appellant's admissions of involvement in prostitution during the appeal years-. The arrests simply underscore appellant's admissions.

Finally, we note that it is well settled that a reasonable reconstruction of income is presumed correct. and the taxpayer bears the burden of proving it is erroneous. (Breland v. United States, 323 F.2d 492,. 496 (5th Cir. 1963); Appeal of Marcel C. Robles, Cal. St. Bd. of Equal., June 28, 1979.) Appellant's only argument that respondent's reconstruction is unreasonable is a vague contention that because the criminal charges were dismissed, there is no support for the actual computations used in determining the assessments. As stated above, appellant's argument is unfounded. The dismissals of the criminal charges are of little consequence because the assessments were not based upon appellant's arrests. Consequently, appellant has failed to present any reason or evidence why respondent's income reconstruction for the period at issue should be modified. Accordingly, respondent's action in this matter will be sustained.

Appeal of Hee Yang Juhang

O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 19060 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claims of Hee Yang Juhang for refund of personal income tax in the amounts of $13,196 and $17,281 for the years 1979 and 1980, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 6th day Of November , 1985, by the State Board of Equalization., with Board Members Mr. Dronenburg, Mr. Collis, Mr. Bennett and Mr. Harvey present.

Jr Ernest J. Dronenburg, . , Chairman

Conway H. Collis , Member

William M. Bennett , Member

Walter Harvey* , Member

, Member

*For Kenneth Cory, per Government Code section 7.9